Supreme Court of the United States

OCTOBER TERM, 1966

No. 77

LAWRENCE LONG, PETITIONER

vs.

THE DISTRICT COURT OF IOWA, IN AND FOR LEE COUNTY, FORT MADISON, IOWA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA

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[fol. 1]

JUSTICE'S TRANSCRIPT CRIMINAL CASES AND FEES

STATE OF IOWA

vs.

LAWRENCE LONG

(Filed April 11, 1963)

Before W. E. MINER J. P. Oskaloosa Township.
Mahaska County, Iowa

Information was filed herein April 9th 1963, by Lawrence K. Winn for a warrant of arrest of No Warrent accusing defendant of the crime of Larceny Warrant issued on said day and placed in the hands of ...., Constable and return ..... 19....., Served by arresting said defendant, who was then arraigned, his rights stated, defendant pleads guilty. The defendant not being ready for trial, cause continued until ..... day of ..... 19.....

Defendant gave bail .....

Or Mittimus Issued

Now on this 10th day of April, 1963, trial proceeds:

(Magistrate will here insert full statement of further proceedings.)

The defendant entered a plea of Guilty, waived preliminary hearing. Appearance bond set at $1000.00. Not being able to furnish bond he was placed in custody of the Sheriff

COSTS		COSTS	
..... J. P.	$.....	State Witnesses	$.....
Inf. 1.00 War.....and docket 1.00	$ 2.00	.....	$.....
Continuance	$.....	.....	$.....
Bond	$.....	.....	$.....
Trial ..... Judgment.....	$ 1.00	.....	$.....
Transcript to	$.....	.....	$.....
Mittimus	$ 1.00	.....	$.....
Order	$.....	.....	$.....
.....	$.....	.....	$.....
Total	$ 4.00	Total	$.....

..... Const.	$.....	Defendant's Witnesses	$.....
Serving Warrant	$.....	.....	$.....
Mileage ..... on Warrants	$.....	.....	$.....
Attendance on Trial	$.....	.....	$.....
Serv. Subpoenas	$.....	.....	$.....
Mileage on Subpoenas	$.....	.....	$.....
Copies of Subpoenas	$.....	.....	$.....
Serving Mittimus on Conviction	$.....	.....	$.....
Serving	$.....	.....	$.....
Total	$.....	Total	$.....

JURY

.....

.....

.....

.....

.....

.....

.....

Transcript No. .....

[fol. 2]

STATE OF IOWA,)
) ss.
MAHASKA COUNTY,)

I, W. E. Miner, Justice of the Peace, in and for said County certify and on oath depose and say that the foregoing is a complete transcript of the proceedings of Docket No. 3 and Page No. 271 in said cause. That the costs herein mentioned are the true costs in said case or cases, and that in all cases herein transcripted where the costs are taxed to the defendant or defendants, the fees herein shown cannot be made from the persons liable to pay the same, and that none of the fees herein shown have ever been transcribed, except as herein noted, or paid by Mahaska County.

Oskaloosa, Iowa, April 10th, 1963.

/s/ W. E. MINER J. P.

Subscribed and sworn to before me this ..... day of ....., 19.....

....., Auditor

	Claimed	Allowed
J. P.	$.....	$.....
Constable	$.....	$.....
Constable	$.....	$.....
Constable	$.....	$.....
Constable	$.....	$.....
Constable	$.....	$.....
Constable	$.....	$.....
Constable	$.....	$.....
Witness	$.....	$.....
Totals	$.....	$.....

The Auditor is hereby authorized to issue warrants in accordance with the above amounts as allowed ...., 19.....

....., Chairman

.....

.....

Board of Supervisors

[fol. 3]

IN THE DISTRICT COURT OF MAHASKA COUNTY, IOWA

THE STATE OF IOWA

vs.

LAWRENCE LONG

(State nature of offense in accordance with requirements of Chap. 773, Code)

INFORMATION—Filed April 22, 1963

Comes now Lake E. Crookham, as ..... County Attorney of Mahaska County, State of Iowa, and in the name and by the authority of the State of Iowa, accuses Lawrence Long of the crime of larceny committed as follows:

And charges that the said Lawrence Long, on or about the 9th day of April, A.D. 1963, in the County of Mahaska and State of Iowa, did take, steal and carry away certain goods and chattel, to wit:

One Pump

the property of Montgomery Ward & Co. Farm Store and of the value of more than $20.00. All contrary to law and in violation of Section 709.1 of the 1962 Code of Iowa.

/s/ LAKE E. CROOKHAM
Mahaska County Attorney

[fol. 4]

STATE OF IOWA, MAHASKA COUNTY, ss.

I, Lake E. Crookham, being duly sworn, do depose and say that I am ..... County Attorney of Mahaska County, Iowa; that I have made a full and careful investigation of the facts upon which the above charge is based, and that the allegations contained in the above and foregoing instrument are true as I verily believe.

/s/ LAKE E. CROOKHAM

Subscribed and sworn to by Lake E. Crookham, before me, the undersigned, this 22nd day of April, A.D. 1963.

(SEAL) /s/ CAROLINE E. CONNELL
Clerk of the District Court.

On this 22nd day of April, A.D. 1963, ... Judge of the District Court, being satisfied from the showing made herein that this cause should ..... be prosecuted by information, the same is approved.

/s/ R. G. YODER
Judge of the District Court.

This information, together with the minutes of the testimony relating thereto, is duly filed in the District Court, this 22nd day of April, A.D. 1963.

(SEAL) /s/ CAROLINE E. CONNELL
Clerk of the District Court of Mahaska County, State of Iowa.

By .....
Deputy Clerk.

Bail is hereby fixed on the within information in the sum of $2000.00.

/s/ R. G. YODER
Judge of District Court.
Clerk of District Court.

Sec. 769.2. FILING BY COUNTY ATTORNEY. The county attorney may, at any time when the grand jury is not actually in session, file in the district or municipal court either in term time or in vacation, an information charging a person with an indictable offense. In judicial districts within which a municipal court exists, the county attorney may at any time, whether or not the grand jury is in session, file an information in the district court charging a person with a misdemeanor.

Sec. 769.3. INDORSEMENT. Such information shall be indorsed, "a true information," which indorsement shall be signed by the county attorney.

Sec. 769.4. NAMES OF WITNESSES—MINUTES OF EVIDENCE. The county attorney shall, at the time of filing such information, indorse or cause to be indorsed thereon the names of the witnesses whose evidence he expects to introduce and use on the trial of the same, and shall also file with such information a minute of the evidence relating to the guilt of the accused of the offense charged of each witness whose name is so endorsed upon the information.

BILL OF PARTICULARS. Sec. 773.5 of the Code, provides that a bill of particulars may be filed by the county attorney, or may be required by the court, where the indictment and minutes of testimony fail to give the defendant sufficient information to enable him to prepare his defense.

INFORMATION

THE STATE OF IOWA

vs.

LAWRENCE LONG

A TRUE INFORMATION

LAKE E. CROOKHAM
County Attorney.

Names of Witnesses

Maynord Monson
Lawrence Wynn
Walter Burch
Amos Cummings

[fol. 5]

IN THE DISTRICT COURT OF
MAHASKA COUNTY, IOWA

1984—CD4—324

[Title Omitted]

(Recorded October 15, 1963)

MINUTE ENTRIES

Now, on this 14th day of October, 1963, this cause came on for hearing and trial pursuant to assignment, the State of Iowa appearing by Lake E. Crookham, the County Attorney of Mahaska County, Iowa, and the defendant appears in person and by his attorney, Harold B. Heslinga, and both parties announce they are now ready for trial.

The Jury is thereupon called and there came twelve (12) good and lawful voters who were drawn to serve as Petit Jurors for this Term of Court and who were impaneled and sworn according to law to well and truly try the issues herein and whose names are as follows, to-wit:

Alveta Boggess, Patsy Campbell, Elizabeth Deaver, Ferne Fellers, Opal Hicklin, Philip Hughes, Leatrice Killion, Martha Klinker, Lloyd Lester, Janet Poe, Lena Vander Wilt and Phyllis Versteeg.

After the Jury is impaneled and sworn according to law, opening statement on behalf of the State of Iowa is made. Opening statement on behalf of the defendant is made. Evidence on behalf of the State in introduced. Garold F. Heslinga enters his appearance on behalf of the defendant to assist defendant's counsel, Harold B. Heslinga, without compensation from the State of Iowa. State's evidence is continued and concluded. State rests. [fol. 6] And it is ordered by the Court that further hearing on said cause be and it is hereby continued until Tuesday, October 15, 1963, at nine o'clock A.M.

Hon. Harold J. Fleck, Judge Presiding
District Court Record 73, Page 428

[fol. 7]

IN THE DISTRICT COURT OF IOWA,
OF MAHASKA COUNTY IOWA

OCTOBER 1963 TERM

No. 1984

[Title Omitted]

VERDICT—Filed October 16, 1963

"We, the jury find the defendant, Lawrence Long, guilty of larceny and fix the value of the property taken at $25."

/s/ LLOYD LESTER
Foreman.

[fol. 8]

IN THE DISTRICT COURT OF IOWA
OF MAHASKA COUNTY, IOWA

OCTOBER 1963 TERM

No. 1984

[Title Omitted]

JUDGMENT ENTRY—October 21, 1963

Now, on this 21st day of October, 1963, a jury having returned a verdict finding the defendant guilty of larceny, at 8:15 p.m., October 16, 1963, and the defendant and his counsel having waived time to plead and requesting that sentence be delayed until this date, and it now being subsequent, the Court finds that sentence should now be pronounced:

ORDER OF COURT

IT IS THE ORDER AND JUDGMENT OF THE COURT, acting pursuant to the provisions of Section 709.1 of the 1962 Code of Iowa, that the defendant be confined in the State Penitentiary at Fort Madison, Iowa, for a period of not to exceed five years and pay the costs of prosecution.

Judgment accordingly. Mittimus to issue accordingly. Bond on appeal fixed at $2,000. To all of which the defendant excepts.

/s/ HAROLD J. FLECK
Judge, Sixth Judicial District of Iowa.

[fol. 9]

IN THE DISTRICT COURT OF MAHASKA COUNTY, IOWA

STATE OF IOWA

vs.

LAWRENCE LONG

Present: the Honorable Harold J. Fleck Judge of the Sixth Judicial District Walter O. Tharp, Sheriff and Caroline E. Connell, Clerk of said Court.

MITTIMUS—Filed October 24, 1963

The State of Iowa to the Sheriff of said County, Greeting:

Whereas, at a term of the District Court in and for said County, began and held at the Court House in the City of Oskaloosa in said County, on the 22nd day of April, A.D. 1963, Lawrence Long was informed against for the crime of larceny, and on the 16th day of October, A.D. 1963, said Lawrence Long was tried and convicted of the crime of larceny, and on the 21st day of October, A.D. 1963, was sentenced to be confined in the State Peni-

tentiary at Fort Madison in said State, for the term of not exceeding five (5) years from date of admittance, at hard labor, as appears to us of record and pay the costs of prosecution. Defendant sentenced under Section 709.1 of the 1962 Code of Iowa.

WE THEREFORE COMMAND YOU, that you take the body of the said Lawrence Long now confined in the jail of said County, and convey him to the State Penitentiary at Fort Madison in said State, therein to be confined in accordance with the sentence aforesaid; and we also command the Warden of the State Penitentiary at Fort Madison, Iowa, aforesaid to receive the body of the said Lawrence Long and him confine in the said State Penitentiary for the term of not exceeding five (5) years at hard labor, and for so doing this shall be his sufficient warrant.

Appeal Bond fixed at Two thousand & 00/100 ----- ($2,000.00) Dollars.

IN TESTIMONY WHEREOF, I, Caroline E. Connell Clerk of our District Court aforesaid, have hereunto set my hand and affixed the seal of said Court, this 22nd day of October, A.D. 1963.

CAROLINE E. CONNELL
Clerk.

By /s/ VERA M. MINENGA
Deputy.

* * * *

[fol. 10]

[RECEIPT OF WARDEN FOR PRISONER
Omitted in printing]

[RETURN OF SHERIFF Omitted in printing]

* * * *

[fol. 11]

IN THE DISTRICT COURT OF IOWA
IN AND FOR LEE COUNTY,
FORT MADISON, IOWA

* * * *

[File Endorsement Omitted]

LAWRENCE LONG, PLAINTIFF

vs.

JOHN E. BENNETT, Warden, Iowa State Penitentiary, Fort Madison, Iowa, DEFENDANT

APPLICATION FOR LEAVE TO FILE PETITION FOR HABEAS CORPUS IN FORMA PAUPERIS, AND FOR APPOINTMENT OF COUNSEL—filed January 13, 1965

* * * *

Comes now Lawrence Long, plaintiff named in the above entitled cause, being first duly sworn upon Oath, makes this his application to this Honorable Court, for Leave to File and Proceed with my hereto attached and following Petition For Writ Of Habeas Corpus in Forma Pauperis.

And further respectfully request this Court to appoint Competent Legal Counsel to adequately present said petition, and to protect my Constitutional RIGHTS on the Premises.

As good cause herein I do aver and state the following.

JURISDICTIONAL STATEMENT

Jurisdiction in this case is found upon statute and RIGHT; the 1962 Code of Iowa in Section 663.4, 663.5, makes the Court's Jurisdiction POSITIVE and MANDATORY; I sincerely believe I am restrained of my liberty by the above named defendant in violation of my Constitutional RIGHTS as secured by the 5th and 14th Amendments to the United States Constitution.

I make this application for writ of habeas corpus in declaration of poverty as an included AFFIDAVIT in

good faith for the purpose of securing redress to which I believe I am entitled to as a Citizen of the United States, Affidavit of Poverty attached hereto and made a part of this reference thereto.

BRIEF POINTS AND AUTHORITIES

The RIGHT of an individual to relief for an illegal and unlawful restraint or imprisonment by the Writ of Habeas Corpus, shall not be precluded by poverty, or lack of funds, not shall the Writ of Habeas Corpus be suspended.

Citing: Smith vs. Bennett, 81 S.Ct. 895 (1961) as provided under the provision of the United States Constitution, Section 9, Article 1, thereof.

[fol. 12]

BRIEF POINTS AND AUTHORITIES

It is the duty of the Trial Judge in Habeas Corpus Proceedings to appoint competent Legal Counsel to represent persons unable to employ Counsel because of poverty, to represent petitioner in all stages of POST-CONVICTION LEGAL PROCEEDINGS cognizable as a collateral attack upon a sentence of imprisonment, to insure that indigents are not precluded from judicial remedy by their poverty, and that justice shall not wear a dollar sugn in these United States.

See: *Lane* vs. *Brown*, 83 S.Ct. 768 (1963)
Draper vs. *State of Washington*, 83 S.Ct. 774 (1963).

The United States Constitution, Article 1, Section 9, the RIGHT to petition for habeas corpus, Amendment 5, due process of law guarantee. Amendment 14, due process and equal protection of the laws in all—judicial proceedings.

> Opportunity for rdress against detention in violation of fundamental liberties of person, safegard against State action by Federal Constitution, though such opportunity presuppose opportunity to be heard, to

argue and present veidence *MUST NEVER* be totally foreclosed.

See: Towndend vs. Sain, 83 S.Ct. 745, (1963).

Federal Court on habeas corpus must hold evidence hearing if application *did not receive full and fair evidentiary hearing in STATE COURT*, either at time of trial or in calloteral proceedings.

See: Townsend vs. Sain, 83 S.Ct. 745, (1963)

CERTIFICATE OF APPLICANT

I, Lawrence Long, depose, state and aver upon Oath that all statements and representations made and contained in my foregoing Application for Leave to Proceed in Forma Pauperis and Application for Appointment of Counsel are true and correct to the best of my knowledge and belief.

WHEREFORE: I pary this Honorable Court to grant me Leave to Proceed in Forma Pauperis, and to issue an ORDER commanding a full, fair and impartial EVIDENTIARY HEARING before this Court.

STATE OF IOWA)
(SS
COUNTY LF LEE)

Dated this 11 day of January, 1965

/s/ Lawrence Long
LAWRENCE LONG, #28411, Plaintiff,
Box 316, Fort Madison, Iowa.

Subscribed and sworn to before me in my office at Fort Madison, Iowa, by the above named Lawrence Long, this 11 day of January, 1965.

/s/ Ralph D. Moehn
Notary Public in and for
Lee County, Iowa
at Fort Madison, Iowa.

My Commission expires July 4th, 1966.

[fol. 13]

IN THE DISTRICT COURT OF IOWA
IN AND FOR LEE COUNTY,
FORT MADISON, IOWA

* * * *

[File Endorsement Omitted]

[Title Omitted]

AFFIDAVIT OF POVERTY—filed January 13, 1965

* * * *

Herein I, Lawrence Long, Plaintiff in the above entitled cause, being first duly sworn, depose and state upon Oath, that I am a Citizen of the United States by birthright; I am of legal age; and I am otherwise qualified to make this AFFIDAVIT.

I am a "Pauper"; I am without funds or means to obtain funds; I have not dispose of any property to so pauperize myself, nor do I posess property. I am unable to pay fees or cost in connection with the filing of my Petition For A Writ Of Habeas Corpus, and I am unable to give security for such cost.

I make this AFFIDAVIT in good faith, for the purpose of the securing of JUSTICE and DUE PROCESS OF LAW and EQUAL PROTECTION OF THE LAWS under the provisions of the State and Federal Constitutions to which I believe I am entitled to as a Citizen of the United States.

All statements contained herein are true and correct to the best of my knowledge and belief.

STATE OF IOWA)
(SS.
COUNTY OF LEE)

/s/ Lawrence Long
LAWRENCE LONG, #28411,
Box 316, Fort Madison, Iowa,
Plaintiff.

Subscribed and sworn to before me in my office at Fort Madison, Iowa, by the above named Lawrence Long, this 11 day of January A.D., 1965.

/s/ Ralph D. Moehn
Notary Public in and for
Lee County, Iowa
at Fort Madison, Iowa.

My Commission expires July 4th, 1966.

[fol. 15]

IN THE DISTRICT COURT OF IOWA
IN AND FOR LEE COUNTY,
FORT MADISON, IOWA

* * * *

[Title Omitted]

PETITION FOR A WRIT OF HABEAS CORPUS—
filed January 13, 1965

Comes now Lawrence Long, plaintiff above named and first being duly sworn upon Oath, makes application to this Honorable Court for a Writ of Habeas Corpus commanding the above named defendant to release him from further imprisonment and all restraint, and a cause therefore your plaintiff-petitioner herein deposes, states and avers:

-1-

That your petitioner is illegally, unlawfully, and un-Constitutional restrained of his liberty, and imprisoned within the premises of the Iowa State Penitentiary, at Fort Madison, Iowa.

-2-

That to your petitioner's best knowledge and belief the cause of said restraint is a MITTIMUS issued by the District Court of Iowa, in and for Mahaska County, Iowa, at Oskaloosa, Iowa, entered on the 22nd day of April, 1963, in the cause of Criminal No. 1984-CD4-324, recorded on October 15th, 1963, being a County Attorney's Information.

-3-

Your petitioner was tried before Court and Jury on a County Attorney's Information charging him with larcent of a pump, in violation of Section 709.1 of the 1962 Code of Iowa. The Jury found your petitioner guilty and the Court sentenced petitioner to an indeterminate term not to exceed five years in the Iowa State Penitentiary at Fort Madison, Iowa. Petitioner Appeal his conviction to the Iowa State Supreme Court, and the Court Affirmed said conviction.

-4-

Your Petitioner's imprisonment is illegal and un-Constitutional, whereas:

(a) Prior to petitioner's appearance before his criminal trial court he was subjected to jeopardy by being placed in the County Jail for a prior of six months before being [fol. 16] brought to trial, and was DENIED the RIGHT to the assistance of Counsel at the time of his preliminary hearing, wherein we find that the guiding hand of counsel is essential to advise petitioner of his rights, and this was the stage when legal aid and advice was MOST CRITICAL to petitioner, what happened at the preliminary hearing in this instant case could have certainly affected the whole trial had your petitioner had the good faith and assistance of counsel at the time of his interrogation and during the preliminary hearing.

-5-

The critical question in this case is whether, under the circumstance, the refusal by the police to honor peti-

tioner's request to consult with his attorney during the course of an interrogation constitutes a DENIAL of the "Assistance of Counsel" in violation of Sixth Amendment to the Constitution of the United States as "made—obligatory upon the States by the Fourteenth Amendment to the United States Constitution, at all stages of the proceedings, and thereby renders inadmissible in state criminal trial any incriminating statements elicited by the police during the interrogation of petitioner wherein your petitioner may have stated that he was guilty when in fact he was not aware of the fact and charge that he was being questioned about, and therefore incriminating himself without due process of law. The right to counsel is afforded for the purpose of aiding the accused for all practical purposes.

-6-

Your Petitioner's Court-Appointed Attorney was incompetent to an extent causing petitioner (the then Defendant) to be as without counsel in his criminal trial due to lack of time said Attorney had to prepare petitioner's defense, and said Attorney's unwillingness to fight for your petitioner's RIGHT to a FAIR AND JUST APPEAL submitted to the Iowa State Supreme Court. No Brief and Argument was submitted to the said Supreme Court upon petitioner's Appeal, The right of an effective appeal to the State Supreme Court in a Constitutional RIGHT, conferred by law, and is on which all eligible persons are entitled to exerise, free from arbitrary or discrimination, and when an accused is denied the right to a fair and just hearing before the hight Court of the State because his Court-Appointed Attorney failed to or refused to present an effective Appeal to the high Court, then the accused is DENIED a fair and impartial review of his conviction which action on the part of his Attorney denies petitioner a just and fair determination of his imprisonment. And such a miscarriage of—bringing petitioner's Appeal to the Supreme without submitting any brief and argument, is a foreclosure of his Constitutional RIGHT to a fair and effective appeal, and may therefore become objectionable under both

either the equal protection or due process provisions of the —Fourteenth Amenmdnt, or the due process provisions of the Fifth Amendment all under the provisions of the 14th Amendment to the United States.

[fol. 17] AUTHORITY IN BRIEF

If an Appeal, attempted appeal, or the receipt of the same initial benefit looking toward prefecting of an effective appeal to the high court of the State becomes altered or the appeal is in any way not effective by thr act of the appellant's Counsel in submitting an appeal, and the appellant is sunsstantial PREJUDICE and appellant on his appeal suffered an unjust decision rendered by the Supreme Court of that State in State hearing the appeal, in connection therewith through some wrongful conduct of the appellant's Court Appointed Counsel, the appellant may then become entitled to a hearing in Habeas Corpus Proceedings and appropriate relief, if not an unqualified discharged from an illegal and un-Constitutional imprisonment.

See: Ex-Parte Mattews, 49 S.W. 623—America Law Reports, United States Annotated Code, 19 A.L.R. 2d 789.

Choice made by State prisoner's Counsel and partifipated in by State prisoner does not automatically BAR State prisoner's RIGHT to relief in Habeas Corpus Proceedings in Federal District Court or ground of forfeiture of prisoner's remedies.

See: Title 28 U.S.C.A. Sec. 2241 et seq—Id.

-7-

The circumstances surrounding my prosecution are such as to deprive me of Due Process of Law and Equal Protection of the Laws, the RIGHT to a Fair and Impartial Criminal Trial as is GUARANTEED by the provisions of the United States Constitution.

Your Petitioner's admission of guilt during his preliminary hearing (without the aid of Counsel) was entred into evidence at your petitioner's criminal trial and was

prejudicial against your petitioner at his criminal trial. See: Brief Point 8 attached to petitioner's petition for a writ of habeas corpus and make a part hereof by this reference.

-8-

Thus considering the recent decisions of the United States Supreme Court, which in this case petitioner did not have the assistance of counsel to represent him at his preliminary hearing as is required by law inorder to defend your petitioner's Constitutional RIGHTS.

At the hearing your petitioner requested the service of an Attorney BUT this was denied because the State of Iowa refused to recognize the mandates of the Supreme Court of the United States, and the Federal Constitution. Your petitioner was mentally incompetent in the fullest legal sense at the time of his preliminary hearing as the result of severe depression caused by alocohal, pus sustained brain washing in persuasion of guilt, and under police guise was subject to the fullest denial of due process at his said preliminary hearing.

[fol. 18] (9)

The fundamental justice inherent in due process allways compelled the conclusion that an indigent defendant has an unqualified RIGHT to the assistance of Counsel as all stages of the proceedings and this includes the RIGHT to Counsel at his preliminary hearing.

IN AN OPINION OF THE ATTORNEY GENERAL OF IOWA (Hultman) on October 5, 1964 said. "In Iowa, while it is not the normal function of a magistrate at preliminary hearing to receive pleas of guilty, such a plea if made at preliminary hearing may be intorduced at trial as admission of guilt. An Iowa preliminary hearing then may be just as critical a stage as the Maryland preliminary hearing in—*White* vs. *Maryland* supra. IT IS THEREFORE OUR OPINION THAT A MAGISTRATE IN IOWA HAS A CONSTITUTIONAL DUTY TO APPOINT COUNSEL FOR AN INDEGENT DEFENDANT AT PRELIMINARY HEARING.

In Johnson vs. Zerbet, Warden, 1937, 304 U.S. 358, 58 S.Ct. 1019, 1024, 82 L.Ed. 1461, 146 A.L.R. 357,

the Supreme Court said", "If the accused, however, is not represented by Counsel and has not competently and intelligently waived his—Constitutional RIGHT, the Sixth Amendment stands as a Jurisdictional BAR to a valid conviction and sentence depriving him of his life or his liberty.

(10)

Prosecting Attorney's that refuse to believe in their Oath of Office, their Oath to uphold the Laws and Constitutions of both State and Federal acting in violation of the due process of law.

The Courts of this land are aware of the fact and evidently the Legislature of Iowa did recognize this condition, or else there would have been no need to establish another law demanding that an accused be represented by Counsel at all stages of criminal proceedings. Because as of date the Law and Constitutions are not worth the paper they are written on if the RIGHTS GUARANTEED to the Citizens of the United States are not granted to them by these in power in this country and there have been too many Prosecuting Attorneys that fail to recognize there RIGHTS. Under these circumstances the Legislature and Government Departments were forced to pass a mandate to protect the RIGHTS of the people. This is a serious condition to exist in our country, while the basis of our government is the proposition that all men were created free and equal, and guaranteed equal protection, due process and JUSTICE, the equal protection and advice of Counsel, and yet these RIGHTS are withheld in a country that is based on the Ideals ot TRUTH, HONESTY AMD JUSTICE TO ALL.

BRIEF POINTS AND AUTHORITIES

". . Nor shall any State deprive any person of life, libtry, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of thelaws".

UNITED STATES CONSTITUTION, Amend, 14 Sec. 1.

[fol. 19] ". . . . . no person shall be deprive of life, linerty, or property, without due process of law."

CONSTITUTION OF THE STATE OF IOWA, Sec. 1.

"Denial of due process of law is a jurisdictional question which may be raised on habeas corpus, amd any infringment of constitutional RIGHTS of those accused of crime MSUT be considered a denial of due process of law.

SEWELL VS. LAONSON, Iowa 1953, 57 N.W. 2d 556.

". . . nor shall any person be subject for the same offense to be twice put in *jeopardy* of life or limb; . . . .

UNITED STATES CONSTITUTION, Amend. 5.

"No person shall be twice placed in jeopardy for the same offense."

REEN VS. UNITED STATES, 76 S.Ct. 497.

"IT IS NOT THE VERDICT OR JUDGMENT WHICH PLACES A PRISONER IN JEOPARDY: IF A COURT PROCEEDS ILLEGALLY AFTER A PRISONER HAD BEEN PLACED IN JEOPARDY, IT'S ILLEGAL ACT CANNOT NULLIFY THE JEOPARDY: IF IT DID, THEN THE PROCESS MIGHT BE REPEATED FOREVER, AND THE CONSTITUTIONAL GUARANTY BE RENDERED VOID."

1. BISHOP OF CRIMINAL LAW p-772, #1045.

"All persons accused of crimes MUST stand on an equality before the BAR OF JUSTICE."

GRIFFIN VS, PEOPLE OF STATE OF ILL., 1956, 76 S.Ct. 585.

"Under the DUE PTOCESS clause of U.S.C.A., Const., Amend. 14, a State prosecution cannot be brought about by methods that offend a sense of JUSTICE."

ROCHIN VS. PEOPLE OF CAL. 72 S.Ct. 745, 205.

"There are procedural errors so grave as to require appropriate federal court order directing habeas corpus applicant's release unless State provides remedy.

TOWNSEND VS. SAIN, 83 S.Ct. 745.

"Where provisions of Bill of Rights of Federal Constitution is fundamental and essential to fair trial, it is made a full obligation on State Court, by the Fourteenth Amendment.

GIDEON VS. WAINRIGHT, 83 S.Ct. 792.

"Sixth Amendment of Federal Constitution providing that in all criminal prosecution the accused shall enjoy the RIGHT to the FULL ASSISTANCE of COUNSEL (at all stages of his proceedings) for his defense is made obligatory on the States by the Fourteenth Amendment, and indigent defendant in criminal prosecution in State Court has a RIGHT to have COUNSEL APPOINTED for him at all stages of proceedings including preliminary hearing.

GIDEON vs. WAINWRIGHT, 83 S.Ct. 792.

"Assistance of Counsel in criminal prosecution means that accused is entitled to the GOOD-FAITH, AND EFFECTIVE ASSISTANCE of COMPETENT LEGAL COUNSEL IN MAKING HIS DEFENSE.

HAWK vs. OLSON, Neb. 1945, 66 S.Ct. 116.

"Due Porcess denied in proceedings leading to conviction is not restored just because State Court declines to Adjudicate the claimed denial on the MERITS.

FAY vs. NOIA, 83, S.Ct. 822.

[fol. 20] "If a Law is so applied and administered as to make unjust discrimination between persons in similar circumstances material to their RIGHTS, such a DENIAL of equal justice violates "due process of Law".

HOWARD SPORTS DAILY vs. WELLER, 1941, 18 A. 2d 210, 179 Md. 335, United States Code Annotated.

"Due Process of Law" is a law which hears before it condemands, which proceeds upon inquiry and redress, and renders judgment *ONLY* afterwards, and such due process of law is required both by Federal and State Constitutions.

CANTU vs. PARR, Tex Cir., App. 1960, 338 S.W. 2d 182. United States Code Annotated.

"MERE PERFUNCTORY PERFORMANCE BY COUNSEL DOES NOT SATISFY THE CONSTITUTIONAL REQUIREMENTS THAT ACCUSED SHALL HAVE THE EFFECTIVE ASSISTANCE OF COUNSEL.

REECE vs. STATE OF GA. 1955, 76 S.Ct. 167.

"Due Process of Law "The due process of law provisions of the 5th and 14th Amendments GUARANTESS TO EVERY PERSON HIS DAY IN COURT, ans reasonable opportunity to be heard or defend, and it requires orderly proceedings in competent tribunal in accordance with general established rules not violative of fundamental RIGHTS.

ROSENBLUM vs. ROSENBLUM, 1943, 42 N.Y.S. 2d 626, 181; Misc. 78, United States Code Annotated.

"UNDER CONSTITUTIONAL PROVISIONS, COURTS OF JUSTICE OF THE STATE SHOULD BE OPEN TO EVERY PERSON AND SPEEDY AND CERTAIN REMEDY BE AFFORDED FOR EVERY WRONG, AND RIGHT OF JUSTICE SHALL BE ADMINISTERED WITHOUT FAIL, DENIAL, DELAY, OR PREDUICE, AND CONSTRUED TO MEAN THAT A PERSON CONVICTED OF A CRIME HAS A CONSTITUTIONAL RIGHT.

AMERICA LAW REPORTS, Annotated, 19 A.L.R. 2d 789.

"Once a State chooses to establish appellant review in Criminal Cases, the Equal Protection of the Fourteenth (14) Amendment requires that the State NOT FORECLOSE INDIGENTS from access to any phase of that procedding, or of any phase of that procedure because of their poverty and such principle is not to be limited to direct appeal from criminal conviction but extends alike to State POST-CONVICTION PROCEEDINGS" Citing SMITH vs. BENNETT, 356 U.S. 708, 81 S.Ct. 895, 6-L Ed. 2-39.

See: Lans vs. Brown, 83 S.Ct. 768.

IF NO EXPRESS FINDING OF FACT HAVE BEEN MADE BY STATE COURT, FEDERAL DISTRICT COURT ON HABEAS CORPUS MUST INITIALLY DETERMINE WHETHER STATE COURT IMPLIEDLY FOUND MATERIAL FACTS; AND NO RELEVANT FINDINGS WERE MADE UNLESS STATE COURT DECIDED ON THE MERITS OF THE—CONSTITUTIONAL CLAIM TENDERED BY DEFENDANT.

TOWNSEND vs. SAIN, 83 S.Ct. 745.

[fol. 21] ARGUMENT

The first ground pleaded your petitioner as good and sufficient cause for his release by the Writ of Habeas Corpus, is that prior to the criminal trial proceedings resulting in his conviction and his imprisonment, your petitioner placed in cinfinement within the County Jail at Oskaloosa, Iowa, in the County of Mahaska Iowa, for priod of six months, being denied a sppedy trial, and denied the right to the aid and assistance of Counsel when in fact your petitioner requested Counsel upon his arrest.

That when your petitioner was taken to Court on his preliminary hearing he was again denied the right to the aid of Counsel, and that that petitioner was tricked into making a statement, which was used against him at his criminal trail. Petitioner did not have Counsel—appointed to him in time for his Court-Appointed Attorney to effectively perpare a defense for him.

Your petitioner's Court-Appointed Attorney did not submit any brief and argument to the Iowa State Supreme Court upon appeal. The only evidence that was before the Supreme Court was on Clerk's transcript, And the competence of petitioner's Court-Appointed Attorney is challenged as your Petitioner's third ground for relief from his illegal and un-Constitutional imprisonment by the Writ of Habease Corpus, and the question of competence here goes only to said Court-Appointed Attorney's conduct and action in representation of petitioner in his criminal trial and on the action of his Counsel's failure to submit a full and fair evidentiary argument to the Supreme Court on appeal. Petitioner contends that the demeanor and outcome of said criminal proceedings clearly show incompetence by his Court-Appointed Attorney, in that the said Attorney refused to and failed to submit the case to the Supreme Court of Iowa in proper manner, in that the said Attorney accepted the guilty conviction by his criminal trial court; by said Attorney's failure to question the criminal trial Court's JURISDICTION to try petitioner brought to trial six months after his arrest for a crime that under condition should have not been more than a misdemeanor charge

The legal requirements that an individual forced to defend himself in a Court of Law upon his preliminary hearing on a criminal charge, shall be afforded Counsel in making his defense, includes ther erquirment that said Attorney or Counsel shall be competent, and give the accused his good faithfully assistance, and your petitioner contends that he was as without Counsel in his Criminal Trial as described in the foregoing part of this argument. [fol. 22] As your petitioner's final grounds for his release, petitioner pleads that at the time of criminal preliminary hearing which proceedings resulted in his being brought to criminal trial Court, he was wholly incompetent to stand trial; that at said time his mental condition and status as the defendant; and that he at the said time in no condition to stand trial, that his mental condition was in such a state that he could not resist suggestion.

Surely this condition and situation violates the basic principle and concept of justice, and cannot be condoned

or allowed to stand as precedent; for where lies the need and purpose of trials and courts when an emotionally and mentally disturbed prisoner can be subjected to tratment which could only aggravate his condition, and it was upon petitioner's criminal trial court piously rendered judgment of sentence against him, knowing at that time, that your petitioner was without—congizance of consequences, or even the reality of his criminal trial; is this due process and equal protection of the laws which we in the United States claim with GREAT PRIDE ???? *No most certainly NOT*, this dose not even resemble JUSTICE, or a fair and impartial legal trial, and this is wholly repugnant to the Constitutions of both State and Federal Law.

This situation and condition is resultant of officials of the State of Iowa acting without consideration of the laws, or Constitutions of the United States and the State of Iowa, who apparently believe that the Constitutional GUARANTEE or Personal Liberty is only for themselves and their friends. Petitioner urges this Honorable Court carefully consider and weigh the consequences of uncontroled behaviour of law enforcement and juricial offiicals in the manner argued against here, and strick down this practice by issuance of the Writ paryed, that it may be known that the RIGHTS, PRIVILEGES AND IMMUNITIES OF CITIZENS will be upheld in the State of Iowa without respect of person or politic.

Your petitioner submits that he is entitled to his release by the Writ of Habeas Corpus on the basis of his Constitutional RIGHTS which his judgment of sentence was rendered without DUE PROCESS OF LAW OR THE THE RIGHT EQUAL PROTECTION OF THE LAWS.

In summary your petitioner respectfully submits that he is entitled to the relief prayed herein; that each point of argument constitutes a seperate ground violate of petitioner's State and Federal RIGHTS to due process ans equal protection of the lawm which taken singly are sufficient MERIT to warrant the issuance of the writ prayed; and that together these grounds constitute a TOTAL VIOLATION of petitioner's right to due process of the law in his criminal trial, and equal protection of

the laws in this action to an extent vitating his criminal trial Court's JURISDICTION, and leaving its JUDGMENT of sentence against your petitioner VOIDABLE by the GREAT WRIT.

[fol. 23] IN CONCLUSION

WHEREFORE PETITIONER PRAYS the writ of habeas corpus issue and that this Court bring this cause for hearing, and that this cause be set for immediate trial after the appointment of theretofore requested; and that following an evidentiary hearing on the MERITS of the Constitutional Question raised herein, this application be sustained and petitioner be released from further imprisonment and restraint as law and justice demands.

I, Lawrence Long, being the plaintiff-petitioner herein depose and state upon Oath, that all assertions of fact and all statements contained herein are true and correct as I verily believe.

Dated this 11 day of January, 1965.

Respectfully submitted.

/s/ Lawrence Long
LAWRENCE LONG, 28411,
Box 316, Fort Madison, Iowa,
Plaintiff-Petitioner.

STATE OF IOWA)
(SS.
COUNTY OF LEE)

Subscribed and sworn to before me in my office at Fort Madison, Iowa, by the above named Lawrence Long, this 11 day of January 1965.

/s/ Ralph D. Moehn
Notary Public in and for
Lee County, Iowa
at Fort Madison, Iowa.

My Commission expires July 4th, 1966.

[fol. 24]

IN THE DISTRICT COURT OF IOWA,
IN AND FOR LEE COUNTY, FORT MADISON

Case No. 13943

[File Endorsement Omitted]

[Title Omitted]

ORDER DATED JANUARY 18, 1965, GRANTING AN EVIDENTIARY HEARING TO BE COMMENCED ON JANUARY 29, 1965

This matter comes before the Court upon a petition for writ of habeas corpus filed by the plaintiff, Lawrence Long, on January 13, 1965. The plaintiff alleges that he is a pauper, and seeks to be relieved of paying the usual filing fee.

The Court having examined the petition, finds that the writ should be issued.

IT IS THEREFORE HEREBY ORDERED that the plaintiff may proceed without the usual payment of costs, and IT IS FURTHER ORDERED that the writ of habeas corpus issue.

IT IS FURTHER ORDERED that the writ of habeas corpus is returnable on the 29th day of January, 1965, at 11:00 A.M. in the courtroom of the Lee County Courthouse at Fort Madison, Iowa. The Clerk is further ordered to notify the proper parties as provided by law.

Dated this 18th day of January, A.D., 1965.

/s/ W. L. Huiskamp
Judge of District Court
First Judicial District

[fol. 25]

IN THE DISTICT COURT OF THE STATE OF IOWA
IN AND FOR LEE COUNTY, FORT MADISON, IOWA

Case No. 13943

[File Endorsement Omitted]

[Title Omitted]

ANSWER OF DEFENDANT, JOHN E. BENNETT WARDEN ETC.—filed January 29, 1965

Comes now John E. Bennett, Defendant herein, by his attorneys, Johnson, Phelan & Tucker, in answer to Plaintiff's petition and states as follows:

1. Defendant denies paragraphs 1, 4, 5, 6, 7 and 8.
2. Defendant admits paragraph 2 of Plaintiff's petition with regard to his having been convicted in Mahaska County although does not admit the exact dates or sentence, said facts to be verified and confirmed at the trial of the case.
3. Defendant denies paragraph 3 by reason of lack of information and belief.
4. Defendant denies paragraphs 9 and 10 for the reason that they are not allegations of ultimate fact but are more in the nature of an argument making it impossible to plead thereto.

Wherefore, Defendant prays the Court to dismiss Plaintiff's petition at Plaintiff's costs and to remand the petitioner to the custody of the Defendant.

/s/ Thomas E. Tucker
JOHNSON, PHELAN & TUCKER

[fol. 26]

IN THE DISTRICT COURT OF IOWA,
IN AND FOR LEE COUNTY, FORT MADISON

Case No. 13943

[File Endorsement Omitted]

[Title Omitted]

ORDER DENYING APPLICATION FOR WRIT OF HABEAS CORPUS—February 20, 1965

This matter comes before the Court upon a petition for a writ of habeas corpus filed January 13, 1965. The matter was set for hearing on January 29, 1965, at which time testimony was received. The Court finds that the plaintiff raises the following contentions:

1. That he was confined six months in jail before being brought to trial.
2. That he was denied the assistance of counsel at the time of his preliminary hearing.
3. That he was refused by the police the right to consult his attorney at times during his confinement in the jail and during his interrogation.
4. That his court-appointed attorney was incompetent.
5. That the plaintiff was incompetent at the time of his preliminary hearing because of severe depression caused by alcohol plus sustained brainwashing.

The Court finds that the plaintiff's contention No. 1, that he was confined six months in jail prior to being brought to trial was determined by the Iowa Supreme Court against this plaintiff in the case of State vs. Long, 130 N.W. 2nd, 663. The Court further finds that as to Objection No. 2, that he was denied counsel at the time of the preliminary hearing, the County Attorney, Lake E. Crookham, contacted the attorney for the then defendant, Patrick Life, and said attorney advised that he would not be present, and informed the County Attorney that he [fol. 27] would waive the defendant to the Grand Jury, and waived a preliminary hearing. The Court finds that no rights were lost at this time, and that he was actually

represented, and the Iowa Supreme Court found in the case of State vs. Long, 130 N.W. 2nd, 663: "He was at all times represented by counsel."

The Court further finds in regard to Objection No. 3 that the plaintiff has failed in his proof that the police refused to permit him to contact his attorney. The evidence shows that he contacted his attorney on numerous occasions throughout his confinement.

In regard to Objection No. 4, the Court finds that the plaintiff was represented by Patrick Life and by Heslinga and Heslinga, attorneys at law, both of whom the Court finds are competent.

The Court further finds in regard to Objection No. 5 that there was no competent evidence submitted at the hearing to show that the plaintiff, Lawrence Long, was incompetent for any reason at any time during the confinement.

For the reasons above set forth, IT IS THEREFORE HEREBY ORDERED that the application for writ of habeas corpus is denied.

Dated this 20th day of February, A.D., 1965.

/s/ W. L. Huiskamp
Judge of District Court
First Judicial District

[fol. 28]

IN THE DISTRICT COURT OF IOWA,
IN AND FOR LEE COUNTY, FORT MADISON, IOWA

Case No. 13943

[File Endorsement Omitted]

[Title Omitted]

NOTICE OF APPEAL—filed March 17, 1965

TO THE ABOVE NAMED DEFENDANT:

Notice is hereby given that Lawrence Long, plaintiff above named, hereby appeals to the Supreme Court of Iowa from the order of the Honorable W. L. Huiskamp denying a petition for writ of habeas corpus.

Such order was entered in this action on the 20th day of February, 1965, and is on file with the Clerk of the District Court at Fort Madison, Iowa.

/s/ Lawrence Long
LAWRENCE LONG
28411
Box 316
Fort Madison, Iowa

[fol. 29]

IN THE DISTRICT COURT OF IOWA,
WITHIN AND FOR LEE COUNTY, FORT MADISON

* * * *

Case No. 13943

[Title Omitted]

APPLICATION FOR APPOINTMENT OF COUNSEL TO PROSECUTE AN APPEAL—filed March 23, 1965

Comes now Lawrence Long, plaintiff in the above entitled cause, making application for appointment of counsel to prosecute an appeal to the Supreme Court of Iowa from the order entered in such cause on the 19th day of February, 1965, and states the following:

1. That plaintiff was granted an evidentiary hearing on his petiiton for writ of habeas corpus but was required to prosecute his action himself due to his lack of funds with which to retain professional counsel and the Courts refusal to appoint counsel although faced with such evidence.

2. That the appointment of counsel is necessary to effectively prosecute a full fledged appeal to the Supreme Court of Iowa, and plaintiff being a pauper and proceeding as such is without funds or means to retain or employ counsel to represent him in appellate proceedings.

Wherefore, plaintiff respectfully requests that counsel be appointed to represent him in appellate proceedings under authority of *Douglas* v. *People of State of California*, 83 S.Ct. 814 (1963), notwithstanding the absence of state statute therefor.

Respectfully submitted,

/s/ Lawrence Long
LAWRENCE LONG
28411
Box 316
Fort Madison, Iowa
Plaintiff

[fol. 30]

IN THE DISTRICT COURT OF IOWA,
IN AND FOR LEE COUNTY, FORT MADISON

Civil No. 13943

[File Endorsement Omitted]

[Title Omitted]

APPLICATION FOR COURT REPORTER'S TRANSCRIPT OF THE PROCEEDINGS HAD IN HABEAS CORPUS WITHOUT PAYMENT OF FEES OR COSTS—filed March 23, 1965

Comes now Lawrence Long, plaintiff-appellant in the above entitled cause and makes application to this Honorable Court for a certified copy of the Official Court Reporter's Transcript of the proceedings had in such cause without payment of fees or costs.

Plaintiff has duly perfected an appeal to the Supreme Court of Iowa in the above entitled post-conviction proceedings and such transcript is necessary to prepare an adequate record with which to prosecute an effective appeal to the Supreme Court of Iowa.

I verily believe I am entitled to such transcript under recent mandates of the Supreme Court of the United States wherein it is stated:

> Once a state chooses to establish appellate review in criminal cases, the equal protection clause of the 14th amendment requires that the state not foreclose indigents from access to any phase of that procedure solely because of their poverty and such principle is not to be limited to direct appeals from criminal convictions but extends alike to state post-conviction proceedings.
>
> Lane v. Brown, 372 U.S. 477, 83 S.Ct. 768 9 L.ED. 2d, 892 (1963)
>
> In regard to a states grant of a right to test detention of prisoners, the 14th amendment weighs interest of rich and poor criminals in equal scale and its hand extends as far to each.
>
> Smith v. Bennett, 81 S.Ct. 895, (1961)

[fol. 31] To interpose any financial consideration between an indigent prisoner of a state and his exercise of a state right to sue for his liberty is to deny that prisoner equal protection of the laws.

Smith v. Bennett, 81 S.Ct. 895, (1961)

Habeas corpus is the highest remedy in law for any man imprisoned and its availability to regain liberty lost through criminal process cannot be made contigent upon choice of criminal or civil label for the writ.

Smith v. Bennett, 81 S.Ct. 895, (1961)

For the reasons stated herein, I respectfully request this court enter an order which will permit be to obtain a copy of said transcript which is so vital to obtaining the adequate appellate review I seek.

Herein I, Lawrence Long, being first duly sworn, depose and state that all the foregoing statements are true and correct to the best of my knowledge and belief.

Respectfully submitted,

/s/ Lawrence
LAWRENCE LONG
28411 Box 316
Fort Madison, Iowa

STATE OF IOWA)
(ss.
COUNTY OF LEE)

Subscribed and sworn to before me in my office at Fort Madison, Ia., by the above named Lawrence Long, this 22 day of March, 1965

/s/ Ralph D. Moehn
Notary Public
in and for Lee County

My commission expires July 4, 1966.

[fol. 32]

IN THE DISTRICT COURT OF IOWA,
IN AND FOR LEE COUNTY, FORT MADISON

Case No. 13943

[File Endorsement Omitted]

[Title Omitted]

ORDER DENYING PLAINTIFF'S APPLICATION FOR TRANSCRIPT AND APPOINTMENT OF COUNSEL—
March 23, 1965

Plaintiff has filed notice of appeal from the ruling of this Court of February 20, 1965, and has requested that he be furnished a copy of the transcript without the payment of the necessary fees, and further that counsel be appointed for him to assist him in the prosecution of his appeal.

Habeas corpus being a civil action there is no provision in the law for the furnishing of a transcript without the payment of fee, or for the appointment of counsel.

IT IS THEREFORE ORDERED AND DECREED THAT the plaintiff's application for transcript and appointment of counsel be and the same is hereby denied.

Dated this 23rd day of March, 1965.

/s/ J. R. Leary
Judge of the District Court
First Judicial District.

[fol. 33]

IN THE SUPREME COURT OF THE STATE OF IOWA

General No. ——

[File Endorsement, Omitted]

LAWRENCE LONG, APPELLANT

vs.

JOHN E. BENNETT, Warden, APPELLEE

APPLICATION TO APPEAL WITHOUT PAYMENT OF FEES OR COSTS, AND FOR LEAVE TO USE TYPEWRITTEN RECORDS, BRIEFS AND ARGUMENTS—filed March 24, 1965.

Comes now Lawrence Long, appellant in the above entitled cause from the Lee District Court, and makes application to appeal without payment of fees or costs in connection with the filing or prosecution of such appeal to the Supreme Court of Iowa, and for leave to submit the appeal upon typewritten records, briefs and arguments because of appellant's inability to pay costs of printing same.

Respectfully submitted,

/s/ Lawrence Long
LAWRENCE LONG
28411
Box 316
Fort Madison, Iowa

[fol. 34]

IN THE SUPREME COURT OF THE STATE OF IOWA

General No. ——

LAWRENCE LONG, PLAINTIFF

vs.

THE DISTRICT COURT OF IOWA IN AND FOR LEE COUNTY, FORT MADISON, IOWA, DEFENDANT

PETITION FOR WRIT OF CERTIORARI

Comes now Lawrence Long, and presents this, his Petition for a Writ of Certiorari directed to the District Court of Iowa in and for Lee County at Fort Madison, Iowa, and for cause states:

1. That the District Court of Iowa in and for Lee County at Fort Madison, Iowa, on the 23rd day of March, 1965 acted illegally and in disregard of mandates of the Supreme Court of the United States whereas:

(a) Plaintiff herein caused a Petition for Writ of Habeas Corpus to be filed in the District Court of Iowa in and for Lee County at Fort Madison, Iowa on the 13th day of January, 1965. Case No. 13943.

(b) The District Court of Iowa in and for Lee County at Fort Madison, Iowa, on January 18th, 1865, entered an order granting an evidentiary hearing to be commenced on January 29th, 1965, in the courtroom of the Lee County Courthouse, Fort Madison, Iowa.

(c) Plaintiff an indigent inmate of the Iowa State Penitentiary, requested before the Court that counsel be appointed to effectively prosecute his Petition for Writ of Habeas Corpus. The Court Refused.

[fol. 35] (d) After hearing, the District Court of Iowa In and for Lee County at Fort Madison, Iowa, entered an order denying the Writ of Habeas Corpus on the 20th day of February, 1965.

(e) Plaintiff thereafter made application to the District Court of Iowa in and for Lee County at Fort Madison, Iowa, requesting that he be furnished a copy of the transcript without payment of fees, and further for appointment of counsel to prosecute an appeal to the Su-

preme Court of Iowa from the adverse order of the District Court entered on the 20th day of February, 1965.

(f) The District Court of Iowa in and for Lee County at Fort Madison, Iowa, denied the application for transcript and the appointment of counsel to prosecute an appeal to the Supreme Court of Iowa on the 23rd day of Mar., 1965, upon grounds that there are no provisions in the Iowa law for the furnishing of transcripts or for the appointment of counsel to prosecute an appeal in a civil matter. A true copy of which is appended hereto.

2. That the order of the District Court of Iowa in and for Lee County at Fort Madison, Iowa, entered on the 23rd day of March, 1965, constitutes a denial of due process of law and equal protection of the laws under provisions of the Constitution of the United States, Amendment 14, Section 1 thereof, whereas:

(a) Plaintiff was permitted to commence proceedings by the post-conviction remedy of habeas corpus without without the payment of fees or costs because of his indigency, pursuant to *Smith* v. *Bennett*, 81 S. Ct. 895, notwithstanding the absence of state statutes therefor.

(b) The order of the District Court of Iowa in and for Lee County at Fort Madison, Iowa, entered on the 23rd day of March, 1965 denying indigent plaintiff a transcript without payment of fees denies him due process of law and equal protection of the laws under provisions of the [fol. 36] Constitution of the United States, Amendment 14, Section 1 thereof, in that plaintiff, a pauper, is unable to purchase a transcript and is therefore foreclosed from pursueing all phases of his appeal, other than the mere filing of his intention to, or notice of appeal.

3. Denial of a transcript to indigent plaintiff wishing to appeal as of state right from a denial of a writ of Habeas corpus constitutes denial of due process of law and equal protection of the laws, whereas:

(a) Denial of a transcript to indigent plaintiff attempting to appeal after a hearing and denial of a writ of habeas corpus by the District Court of Iowa in and for Lee County at Fort Madison, Iowa, deprives plaintiff from pursueing an appeal granted as of right; Iowa Constitution, Section 13, Art. 1; Chapter 663, Code of Iowa, 1962, Rule 331, Rules of civil proceedure.

(b) Iowa has chosen to establish a system of appellate review whereby a person so wishing may appeal from a denial of a writ of habeas corpus as of right. Unfortunately this system favors the more rich. It cannot be said that full appellate review can be obtained when an indigent is forced to attempt an appeal compiling his record by memory, but a person taking an appeal and having money is upon payment furnished a transcript as of right. Does Iowa's appellate system afford the same due process and equal protection of the laws to the rich and poor alike, when a person with sufficient funds can obtain a transcript and appeal as of right to the Supreme Court of Iowa from a denial of a writ of habeas corpus, but an indigent after filing notice of appeal and making application for a transcript without payment suddenly discovers that his means of pursueing his appeal and receiving full and adequate appellate review are crushed due to his indigency.

4. The order of the District Court of Iowa in and for Lee County at Fort Madison, Iowa, entered on the 29th day of January, 1965, denying plaintiff the appointment of counsel tp prosecute a petition for writ of habeas [fol. 37] corpus at a hearing for such granted by the defendant Court and the order of the 23rd day of March, 1965, denying plaintiff the appointment of counsel to prosecute an appeal to the Supreme Court of Iowa denies him due process of law and equal protection of the laws under provisions of the Constitution of the United States, Amendment 14, Section 1 thereof, in that the plaintiff, a pauper, was unable to employ or retain counsel at the time of the hearing and is unable now to employ or retain counsel to represent him in an appeal to the Supreme Court of Iowa from an order of the Lee County District Court denying a writ of habeas corpus.

(a) The orders of the District Court of Iowa in and for Lee County at Fort Madison, Iowa, denying indigent plaintiff appointment of counsel are clearly discriminatory against him as a pauper and denies him due process and equal protection of the laws, in that plaintiff, sueing for his freedom as of right, chapter 663, 1962 Code of Iowa, was foreclosed because of his indigency from having legal

representation in the form of professional counsel to represent him at his hearing for writ of habeas corpus, which he was allowed to commence pursuant to *Smith* v. *Bennett*, 81 S. Ct. 895, (1961), with the Court clearly understanding that he was not able to pay the few dollars filing fee. In view of this evidence plaintiff with an eighth grade education was made to attempt to argue the fine points of law against the County Attorney of Lee County, Iowa, before the District Court of Iowa, in and for Lee County at Fort Madison, Iowa, but if plaintiff would have had monies he could have as of right, employed counsel to represent him at his habeas corpus hearing. Plaintiff has been denied appointment of counsel to represent him in his appeal to the Supreme Court of Iowa. This can only mean that even if he had the means to obtain a transcript to carry on his appeal he will be made to match legal knowledge with the Iowa Attorney General's office in attempting to put his case before the Supreme Court of Ia.

(b) Iowa has established an appellate system whereby plaintiff may appeal as of right, whereas from the order [fol. 38] of the District Court of Iowa in and for Lee County at Fort Madison, Iowa denying his Petition for Writ of Habeas Corpus, but plaintiff due to his indigency cannot enjoy the same degree of legal representation which would be his as of right if he had money, as the person enjoys who has money.

(c) The act of the District Court of Iowa in and for Lee County at Fort Madison, Iowa in denying plaintiff a transcript and the appointment of counsel to represent him at his hearing and to prosecute an appeal to the Supreme Court of Iowa, denies plaintiff due process of law and equal protection of the laws in that it denies to plaintiff, as a pauper, that right to appeal which it would otherwise grant him were he not a pauper. Further, the act of the District Court of Iowa in and for Lee County at Fort Madison, Iowa in denying plaintiff a transcript and the appointment of counsel to prosecute an appeal to the Supreme Court of Iowa after authorizing commencement of the original proceedings in the District Court without the payment of fees or costs therefor because of plaintiff's indigency is contrary to the mandates

of the Supreme Court of the United States in *SMITH* vs *BENNETT*, 81 S.Ct. 895, (1961); *LANE* vs *BROWN*, 83 S.Ct. 768, (1963).

Wherefore, plaintiff requests this Court issue a Writ of Certiorari directed to the District Court of Iowa in and for Lee County at Fort Madison, Iowa, commanding such Court to transmit the certified records in Case No. 13943, entitled, Lawrence Long, Plaintiff, vs John E. Bennett, Warden, Iowa State Pentitentiary, Fort Madison, Iowa, Defendant, to the Clerk of the Supreme Court of Iowa forthwith, that this Court may review the records and determine therefrom whether or not plaintiff is being or has been denied due process of law or equal protection of the laws under provisions of the Constitution of the United States, Amendment 14, Section 1 thereof, by being denied a transcript of his habeas corpus hearing and appointment of counsel to represent him in appellate proceedings before the Supreme Court of Iowa in such cause.

[fol. 39]

Respectfully submitted,

/s/ Lawrence Long
LAWRENCE LONG
28411
Box 316
Fort Madison, Iowa
Plaintiff.

STATE OF Iowa)
ss.
COUNTY OF LEE)

SUBSCRIBED and SWORN to before me this 6 day of April, 1965.
(month) (year)

/s/ Ralph D. Moehn
Notary Public

My commission expires
7- 4- 66
(Month, day, year)

[fol. 40]

IN THE SUPREME COURT OF THE STATE OF IOWA

[File Endorsement Omitted]

LAWRENCE LONG, PLAINTIFF

vs.

THE DISTRICT COURT OF IOWA IN AND FOR LEE COUNTY, FORT MADISON, IOWA, DEFENDANT

APPLICATION FOR LEAVE TO PROCEED WITHOUT PAYMENT OF FEES OR COSTS—filed April 7, 1965

STATE OF IOWA)
SS.
COUNTY OF LEE)

Herein I, Lawrence Long, being first duly sworn, depose and state that I am a pauper, without funds or means to obtain funds with which to pay fees or costs in connection with prosecuting or filing my hereto attached Petition for Writ of Certiorari. I believe I am entitled to the redress I seek, and request the appointment of counsel to represent me in my proceedings for a Writ of Certiorari.

/s/ Lawrence Long
LAWRENCE LONG
Box 316, Reg. 28411
Fort Madison, Iowa
Plaintiff.

SUBSCRIBED and SWORN to before me this 6 day of April, 1965.
(Month) (year)

/s/ Ralph D. Moehn
(Notary Public)

My commission expires
7- 4- 66
(Month, day, year)

Order

Petition for certiorari filed, considered & denied. See in this connection, Waldon vs. District Court of Lee County, Iowa, 130 NW 2d 728. Done this 3 day of May, 1965.

/s/ T. G. Garfield
Chief Justice

[fol. 41]

IN THE SUPREME COURT OF THE STATE OF IOWA

* * * *

Appeal from Lee District Court.

LAWRENCE LONG, PLAINTIFF

vs.

THE DISTRICT COURT OF IOWA IN AND FOR LEE COUNTY, FORT MADISON, IOWA, DEFENDANT

ORDER DENYING PETITION FOR CERTIORARI—May 3, 1965

Petition for certiorari filed, considered, and denied. See in this connection, Waldon vs. District Court of Lee County, Iowa 130 NW 2d 728.

THE SUPREME COURT OF IOWA

/s/ T. G. GARFIELD, Chief Justice

[Clerk's Certificate to foregoing paper omitted in printing.]

[fol. 42]

SUPREME COURT OF THE UNITED STATES

No. 206 Misc., October Term, 1965

LAWRENCE LONG, PETITIONER

v.

THE DISTRICT COURT OF IOWA, IN AND FOR LEE COUNTY, FORT MADISON, IOWA

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—February 28, 1966

On petition for writ of Certiorari to the Supreme Court of the State of Iowa.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted, limited to the following question:

Did the refusal of the state trial court to provide a transcript for the petitioner, solely because state law made no provision for furnishing of a transcript without the payment of a fee, deny the petitioner the opportunity to obtain full appellate review of the trial court's denial of the petitioner's petition for a writ of habeas corpus and thereby deprive the petitioner of the equal protection of the laws?

The case is transferred to the appellate docket as No. 1068 and placed on the summary calendar.

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